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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,438	07/31/2001	Romelia Flores	BOC9-2000-0080(215)	4222
40987	7590	03/09/2005	EXAMINER	
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			CRAIG, DWIN M	
			ART UNIT	PAPER NUMBER
			2123	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/919,438

Applicant(s)

FLORES ET AL.

Examiner

Dwin M Craig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-22 have been presented for Examination.

Specification

2. The abstract of the disclosure is objected to because the number of words exceeds 150.

Correction is required. See MPEP § 608.01(b), and ...

6.02 Content of Specification

(j) Abstract of the Disclosure: A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims.

Claim Objections

3. **Claim 8** is objected to because it depends upon itself. Correction is required.

Claim Interpretation

4. The claim language has been given the broadest reasonable interpretation by the Examiner. For the purposes of Examination the Examiner has determined that, the claimed limitation "*placebo transaction*" is functionally equivalent to a "*simulated transaction*." For the purposes of Examination the Examiner has determined that, the claimed limitation, "*workload driver*" is functionally equivalent to any software application that produces simulated network frames in a system used to test server performance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-9 and 13-22 are rejected under 35 U.S.C. 102(a) as being anticipated by **Conti et al. U.S. Patent 6,522,995**.

5.1 As regards independent **Claims 1 & 15** the *Conti et al.* reference teaches, *using independent Claim 1 as an example*, a method for simulating application workload on an e-business application server hosting a plurality of e-business application programs (**Figure 1, items 25, 27 & 29, Figure 4a, item 180, Col. 1 lines 44-46, Col. 1 Lines 51-58, Col. 6 lines 8-37**), forwarding a *placebo (simulated)* work request to the e-business server (**Figure 1 note the arrows and dotted lines, Col. 6 lines 8-37**), translating the simulated work request into a computer program operation to be performed in the e-business application server (**Col. 6 lines 58-67, Col. 7 lines 1-5** the Examiner notes that *Net.Data* macro is performing the functional equivalent to *translating* a simulated work request), and executing said computer operation in the e-business application server (**Col. 9 lines 38-67, Col. 10 Lines 1-9**).

5.2 As regards independent **Claim 9** the *Conti et al.* reference teaches, a system for simulating application workload on an e-business application server hosting a plurality of e-business application programs (**Figure 1, items 25, 27 & 29, Figure 4a, item 180, Col. 1 lines 44-46, Col. 1 Lines 51-58, Col. 6 lines 8-37**), the functional equivalent of a *User Driver* to generate simulated *placebo* work requests (**Figure 4(a) and 4(b)** the GUI is the functional

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equivalent to a *User Driver*), a configuration file comprising computer program commands (**Figure 2 items 104 and 122**), and a workload driver based on the configuration file *scripts* (**Figure 1 Item 12 Step 1 Create Script** and then start test, it is inherent that there is some form of “workload driver” generating the tests for the Web Server **item 29**).

5.3 As regards dependent **Claims 2 and 16** the *Conti et al.* reference teaches determining a workload based on a simulated request (**Col. 10 Lines 9-36**).

5.4 As regards dependent **Claims 3 and 17** the *Conti et al.* reference teaches a user I.D. (**Col. 4 Line 41**), and the functional equivalent to a workload I.D. *TestID* (**Col. 4 line 48**).

5.5 As regards dependent **Claims 4, 14 and 18** an http header is inherent in the *Conti et al.* reference (**Col. 2 Lines 1-25**).

5.6 As regards dependent **Claims 5, 13 and 19** the *Conti et al.* reference teaches the functional equivalent to a UID in an URL string (**Col. 4 Lines 41-59**).

5.7 As regards dependent **Claims 6, 7, 20 and 21** the *Conti et al.* discloses sending the frames or *packets* with all of the encoded information *i.e. User ID, TestID, Priority* (**Col. 4 lines 41-59**).

5.8 As regards dependent **Claims 8 and 22** the *Conti et al.* reference teaches the functional equivalent of a workload driver (**Figure 1 Item 12 Step 1 Create Script** and then start test, it is inherent that there is some form of “*workload driver*” generating the tests for the Web Server **item 29**).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Dependent **Claims 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Conti et al. U.S. Patent 6,522,995** in view of **Reynolds U.S. patent 6,587,879**.

6.1 As regards independent **Claim 15** please see section 5.2 above.

6.2 As regards dependent **Claims 10 & 12**, the *Conti et al.* reference does not expressly disclose servlets or command classes.

The *Reynolds* reference discloses servlets (**Figure 1 item 16**) and the functional equivalent of a command class (**Figure 5 item 256**). It is noted by the Examiner that when an *object* is instantiated the use of a *class* is implied.

It would have been obvious, to one of ordinary skill in the e-business art, at the time the invention was made, to have used the JAVA servlets and command classes as disclosed in the *Reynolds* reference in combination with the e-business testing methods of the *Conti et al.* reference because, there is a need in the art for architectural standards for testing remote devices having limited processing capabilities (*Reynolds Col. 1 Lines 46-50*).

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6.3 As regards dependent **Claim 11** the *Conti et al.* reference discloses sending the frames or packets with all of the encoded information i.e. User ID, TestID, Priority (**Col. 4 lines 41-59**).

Conclusion

7. Claims 1-22 have been presented for Examination. Claims 1-22 have been Examined and rejected. This Office Action is **Non-Final**.

7.1 The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 6,701,363 discloses a method of deriving web server performance (**Figure 3**).

U.S. Patent 6,002,871 discloses a method of testing a multi-user application program (**Figure 10**).

U.S. Patent 5,974,572 discloses load testing of a server (**Figures 7-11**) using object-oriented methodologies.

7.2 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwain M Craig whose telephone number is (571) 272-3710. The examiner can normally be reached on 10:00 - 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on (571)272-3716. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMC



KEVIN J. TESKA
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